

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEVIN L. W.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C21-5021 TLF

**ORDER AFFIRMING
DEFENDANT'S DECISION TO
DENY BENEFITS**

Plaintiff has brought this matter for judicial review of the Commissioner's denial of his application for supplemental security income benefits.

The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13.

I. ISSUES FOR REVIEW

1. Whether the ALJ erred in failing to explain the discrepancy between the Residential Function Capacity determination and the opinions of state agency consultants?
 2. Whether the ALJ erred in analyzing medical opinion evidence in light of plaintiff's substance abuse?

1 II. BACKGROUND

2 On January 3, 2018 plaintiff filed an application for supplemental security income
3 alleging a disability onset date of June 1, 1992. Administrative Record (AR) 21.
4 Plaintiff's application was denied initially and upon reconsideration. AR 21. A hearing
5 was held before Administrative Law Judge Laura Speck Havens on April 29, 2020. AR
6 21, 43-76. During the hearing plaintiff amended the alleged onset date to January 3,
7 2018. AR 21, 47. On May 14, 2020, the ALJ issued a decision finding that plaintiff was
8 not disabled. AR. 21-40. On November 5, 2020, the Appeals Council denied review
9 making the ALJ's decision the final agency action. AR 1-6.

10 Plaintiff seeks judicial review of the ALJ's May 14, 2020 decision. Dkt. 4.

11 III. STANDARD OF REVIEW

12 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
13 denial of Social Security benefits if the ALJ's findings are based on legal error or not
14 supported by substantial evidence in the record as a whole. *Rerels v. Berryhill*, 874
15 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is "such relevant evidence as a
16 reasonable mind might accept as adequate to support a conclusion." *Biestek v.*
17 *Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted).

18 IV. DISCUSSION

19 The ALJ found that plaintiff had the severe, medically determinable impairments
20 of alcohol and marijuana addiction, degenerative disc disease, hypertension,
21 schizoaffective disorder, depression and anxiety. AR 24. Based on the limitations
22 stemming from these impairments, including the substance abuse disorder, the ALJ
23 found that plaintiff could perform light work with the following limitations:

1 The claimant is capable of lifting and/or carrying up to 20 pounds
2 occasionally and up to 10 pounds frequently. He is limited to stand and/or
3 walk for 6 hours in an 8-hour workday. He is limited to sit for 6 hours in an
4 8-hour workday. The claimant could only occasionally climb, balance,
5 stoop, kneel, or crouch. He may never crawl. The claimant could
understand, remember, and carry out simple one to two step instructions
only, with occasional interactions with co-workers, the general public, and
supervisors. The claimant would have only occasional ability to maintain
attendance. Occasional is defined as very little to one-third of the time.

6 AR 27. Relying on vocational expert (VE) testimony, the ALJ determined that,
7 considering all of plaintiff's impairments, including the substance use disorder, plaintiff is
8 unable to make a successful vocational adjustment to work that exists in significant
9 numbers in the national economy. AR 32.

10 The ALJ found that if plaintiff stopped the substance abuse, plaintiff would
11 continue to have a severe impairments or combination of impairments. AR 32. The ALJ
12 determined that if plaintiff stopped the substance abuse, he would be able to perform
13 light work with the following limitations:

14 The claimant is capable of lifting and/or carrying up to 20 pounds
15 occasionally and up to 10 pounds frequently. He is limited to stand and/or
16 walk for 6 hours in an 8-hour workday. He is limited to sit for 6 hours in an
17 8-hour workday. The claimant could only occasionally climb, balance,
18 stoop, kneel or crouch. He may never crawl. The claimant could
understand, remember, and carry out simple one to two step instructions
only, with occasional interactions with co-workers, the general public, and
supervisors.

19 AR 34. Relying on vocational expert testimony, the ALJ determined that if plaintiff
20 stopped the substance abuse, there would be significant number of jobs in the national
21 economy that plaintiff could perform. AR 39. Accordingly, the ALJ found that plaintiff
22 was not disabled within the meaning of the Social Security Act because substance use

1 disorder is a contributing factor material to the determination of disability and plaintiff
2 would not be disabled if he stopped the substance use. AR 40.

3 A. State Agency Consultants

4 First, plaintiff contends the ALJ erred because the ALJ did not reject the opinions
5 of the state agency consultants but failed to include their opinions regarding plaintiff's
6 limitations in the RFC. Dkt. 16 at 3-6.

7 During a Consultative Examination in May 2018, Dr. Raymond Novak diagnosed
8 plaintiff with the following impairments: depressive, bipolar and related disorders;
9 substance addiction disorders (alcohol); and personality disorders. AR 92. Dr. Novak
10 opined that plaintiff would have moderate limitations in understanding and remembering
11 detailed instructions. AR 97. Dr. Novak stated that plaintiff is able to understand,
12 remember and carryout simple one to two step instructions. AR 97.

13 Further, Dr. Novak found that plaintiff would be moderately limited in his ability to:
14 interact appropriately with the general public; accept instructions and respond
15 appropriately to criticism from supervisors; and get along with coworkers or peers
16 without distracting them or exhibiting behavioral extremes. AR 97. However, Dr. Novak
17 opined that plaintiff would not be significantly limited in his ability to: ask simple
18 questions or request assistance; and maintain socially appropriate behavior and to
19 adhere to basic standards of neatness and cleanliness. AR 97. Dr. Novak explained that
20 plaintiff would perform best in a non-public work environment with minimal social
21 demands "where contacts are superficial and non-collaborative, and where there is no
22 expectation to resolve conflicts or persuade others to follow work related demands." AR
23 97.

1 In a November 2018 Consultative Examination, Dr. Andres Kerns reviewed Dr.
2 Novak's opinion; Dr. Kerns agreed with and adopted Dr. Novak's opinion. AR 115-16,
3 120-21.

4 The ALJ found that the opinions of Dr. Novak and Dr. Kerns were "generally
5 persuasive and consistent with the record." AR 38. Based on these opinions and the
6 record, the ALJ determined that plaintiff was "limited to understand, remember, and
7 carry out simple one to two step instructions only, with occasional interactions with co-
8 workers, the general public and supervisors." AR 38. Additionally, the ALJ
9 acknowledged that Drs. Novak and Kerns found that substance abuse was not material.
10 AR 38. However, the ALJ explained that based on evidence of symptom exacerbation,
11 the plaintiff would have only occasional ability to maintain attendance when abusing
12 substances. AR 38.

13 Plaintiff argues that the ALJ mischaracterized the opinions of Dr. Novak and Dr.
14 Kerns and that the RFC does not reflect the true nature of these opinions.

15 A plaintiff's RFC is "not the *least* an individual can do despite his or her
16 limitations or restrictions, but the *most*." SSR 96-8p, 1996 SSR LEXIS 5 at *2 (emphasis
17 in original). "The ALJ is responsible for translating and incorporating clinical findings into
18 a succinct RFC." *Rounds v. Comm'r SSA*, 807 F.3d 996, 1006 (9th Cir. 2015).
19 Additionally, an ALJ does not need to include limitations in a plaintiff's RFC that are
20 mere recommendations as opposed to imperatives. *Rounds*, 807 F.3d at 1006,
21 *Carmickle v. Comm'r SSA*, 533 F.3d 1155, 1165 (9th Cir. 2008).

22 The ALJ did not err in finding that plaintiff could only have occasional interactions
23 with co-workers, the general public and supervisors. Drs. Novak and Kerns did not limit
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1 plaintiff to only work that is non-public with minimal social demands, where contacts are
2 superficial and non-collaborative, and where there is no expectation to resolve conflicts
3 or persuade others to follow work related demands. Rather, they opined that this is the
4 type of work environment where plaintiff would perform the “best”. Dr. Novak and Dr.
5 Kerns opined that this would be plaintiff’s optimal work environment. However, an RFC
6 need not incorporate what would be an optimal work environment, but rather it must
7 describe the most a claimant can do despite limitations. SSR 96-8p, 1996 SSR LEXIS 5
8 at *2; 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

9 Drs. Novak and Kerns opined that plaintiff would be moderately limited in his
10 ability to interact appropriately with the public and get along with co-workers without
11 distracting them. AR 97. However, they opined that plaintiff would not be limited in his
12 ability to maintain socially appropriate behavior. AR 97.

13 Accordingly, the ALJ did not err in translating and incorporating the opinions of
14 Dr. Novak and Dr. Kerns in plaintiff’s RFC. *Rounds*, 807 F.3d 1006; *Allen v. Heckler*,
15 749 F.2d 577, 579 (9th Cir. 1984) (“If the evidence admits of more than one rational
16 interpretation, we must uphold the decision of the ALJ.”).

17 B. Glenn Marks, Ph.D

18 Next, plaintiff argues that the ALJ erred in concluding that if plaintiff ended his
19 substance use, plaintiff’s RFC would not include the limitation of “only occasional ability
20 to maintain attendance.” Dkt. 16. Plaintiff argues that the only reference to plaintiff’s
21 ability to maintain attendance was in the evaluation of Dr. Marks. *Id.* Accordingly,
22 because plaintiff met with Dr. Marks during a period of sobriety, plaintiff argues that the

1 ALJ erred by relying on an opinion issued during a time of sobriety to justify limitations
2 during periods of substance abuse. Dkt. 16.

3 In May 2018 plaintiff met with Dr. Marks, a consultative examiner. AR 608. Dr.
4 Marks noted that plaintiff reported drinking "at least a 6-pack several times a week" but
5 stated that he had not used alcohol in over two weeks prior to the evaluation. AR 609.
6 Dr. Marks diagnosed plaintiff with alcohol dependence. AR 610. Dr. Marks noted that
7 "consistent attendance is a concern" for plaintiff. AR 611.

8 The ALJ found that Dr. Mark's opinion was generally persuasive and consistent
9 with the record. AR 38. Specifically, the ALJ found that the evidence suggested that
10 plaintiff exhibited symptom exacerbation while abusing substance "to the point where
11 the claimant was treated at the emergency room or hospitalized several times, which
12 could cause attendance issues." AR 38 (citing AR 362, 377, 384, 406-408, 427-432,
13 465-467, 563-585). The evidence that the ALJ cited indicates that plaintiff's mental
14 health symptoms worsened when plaintiff consumed alcohol. AR 362 (plaintiff admitted
15 to Crisis Intervention Clinic due to depression and suicidal ideations, noting
16 intoxication); AR 377 (plaintiff admitted to short-term inpatient treatment due to
17 intoxication, depression and suicidal ideations); AR 384 (discharge notes stating that
18 after detox plaintiff had reduced depression levels and denied suicidal ideations); AR
19 406-08 (treatment notes indicating that plaintiff left treatment facility and was admitted to
20 another clinic complaining of suicidal ideations after intoxication but plaintiff denied
21 suicidal ideations the next morning); AR 427-32 (treatment notes indicating increased
22 symptoms of depression due to alcohol dependence and noting that plaintiff was at an
23 increased risk of suicidal ideations due to alcohol use); AR 465-67 (psychiatric

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1 evaluation indicating that plaintiff endorsed depression, anxiety, and suicidal ideations
2 related to alcohol consumption). The ALJ also cited records indicating that plaintiff was
3 admitted to inpatient care for paranoid and delusional thoughts but denied consuming
4 alcohol in the prior two weeks. AR 563-575.

5 Plaintiff argues that the ALJ erred by improperly relying on Dr. Marks' opinion to
6 determine plaintiff's RFC during a period of substance use because Dr. Marks met with
7 plaintiff during a period of sobriety. Even if the ALJ erred in applying Dr. Marks' opinion
8 to plaintiff's RFC, the error would be harmless because the ALJ provided other valid
9 reasons to support plaintiff's RFC without substance use. *Molina v. Astrue*, 674 F.3d
10 1104, 1115 (9th Cir. 2012); *Stout v. Comm'r Soc. Sec. Admin.*, 454 F.3d 1050, 1055
11 (9th Cir. 2006). The ALJ found that, based on plaintiff's medical records, plaintiff's
12 symptoms were exacerbated while abusing substance to the point where the claimant
13 had to be hospitalized for these symptoms. AR 38. The ALJ found that the frequent
14 hospitalizations would cause attendance issues. AR 38.

15 The ALJ is responsible for translating the medical evidence and clinical findings
16 into a succinct RFC. *Rounds*, 807 F.3d at 1006. Even if evidence is susceptible to more
17 than one interpretation, the Court must uphold the ALJ's finding so long as it is
18 supported by inferences reasonably drawn from the record. *Owen v. Saul*, 830 Fed.
19 Appx. 979, 981 (9th Cir. 2020); *Molina*, 674 F.3d at 1111.

20 Substantial evidence supports the ALJ's determination. The records that the ALJ
21 cited indicate that plaintiff's symptoms worsened with alcohol consumption and during
22 these periods plaintiff reported increased depression, paranoia, and suicidal ideations.
23 The records also indicate that plaintiff's symptoms worsened to the point of

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1 hospitalization. These medical records indicate that after plaintiff was admitted for a few
2 days he would be released reporting reduced symptoms and denying suicidal ideations.
3 This increased symptoms and increased hospitalization related to plaintiff's substance
4 use would rationally cause attendance issues.

5 Based on the foregoing, the ALJ did not commit harmful error in determining
6 plaintiff's RFC if plaintiff ceased substance use.

7 V. CONCLUSION

8 Based on the foregoing discussion, the Court finds the ALJ properly determined
9 plaintiff to be not disabled. Defendants' decision to deny benefits therefore is
10 AFFIRMED.

11 Dated this 13th day of December, 2021.

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15 Theresa L. Fricke
United States Magistrate Judge